DEPARTMENT OF STATE A/CDC/MR
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RDS ☐ or XDS ☐ EXT. DATE
TS AUTH. REASON(S)
E DURSE EXISTING MARKINGS ☐
DECLASSIFIED ☐ RELEASABLE ☑
RELEASE DENIED ☐
PA or FOI EXEMPTIONS

R (88)

**Non-Transfer Assurances**

**Arms Export Control Act - Section 3 (a)(2) states that:**

**"No defense article or defense service shall be sold by the United States Government under this Act to any country or international organization unless-**

**the country or international organization shall agree not to transfer title to or possession of, any defense article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained; "**

Each Letter of Offer accepted (DD Form 1513, attached) contains several conditions of sale including the condition that the articles and services to be provided cannot be retransferred to a Third Country without the prior approval of the USG. In all of our conversations with the Saudis -- and we have talked to the highest levels -- they have indicated that they will abide by the provisions under which the United States supplies military equipment. At the same time they have assured us they have no aggressive intentions against any state in the region. The defensive nature of Saudi Arabia's armed forces modernization program and Saudi assurances they will not train the pilots of other Arab countries on the F-15 or transfer the aircraft were stressed by Vice Minister of Defense Prince Turki in his talks with Under Secretary Benson during her visit to Saudi Arabia this year. Similar assurances have been given by the Saudis to recent Congressional delegations visiting Saudi Arabia.

DEPARTMENT OF DEFENSE LETTER OF OFFER

Form 1513 - language on use and transfer

B8: The purchaser shall, except as may otherwise be mutually agreed in writing use the items sold hereunder only: (a) for the purposes specified in mutual defense assistance agreement, if any, between USG and purchaser; (b) for purposes specified in any bilateral or regional defense treaty to which USG and purchaser are partners, if subparagraph a is applicable; or, (c) for internal security, individual self-defense and/or civic action if subparagraph a and b do not apply.

B9: The purchaser shall not transfer title to, or possession of, the defense articles, components and associate support material; related training or other defense services (including any plan specification or information) furnished under this offer and acceptance to anyone not an officer, employee or agent of the purchaser (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized by B8 (above) unless the written consent of the USG has first been obtained. To the extent that any items, plans, specifications, or information furnished in connection with this offer and acceptance may be classified by the USG for security purposes, the purchaser shall maintain a similar classification and employ all measures necessary to preserve such security, equivalent to those employed by the USG throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the purchaser if the classification is changed. The purchaser will insure by all means available to it, the respect for propriatory rights in any defense article and any plans, specifications, or information furnished, whether patented or not.

# THIRD-PARTY TRANSFERS OF FMS-ORIGIN DEFENSE ARTICLES

Section 3(a) of the Arms Export Control Act (AECA) establishes, as a condition of eligibility of a foreign country or international organization to make purchases of defense articles and defense services from the United States Government under the Foreign Military Sales (FMS) program, that the purchaser agree, among other things, not to transfer "title to, or possession of" the defense articles so acquired to anyone not an officer, agent or employee of the purchaser, unless the consent of the President has first been obtained. (The President's responsibilities in this regard have been delegated to, and are exercised by, the Department of State.) The statutory requirement for agreement on this point is satisfied by Paragraph B(9) of DD form 1513, the standard form FMS letter of offer and acceptance, or sales contract, which provides that the purchaser "[s]hall not transfer title to, or possession of, the defense articles, components and associated support material . . . furnished under this Offer and Acceptance to anyone not an officer, employee or agent of the Purchaser (excluding transportation agencies) . . . unless the written consent of the USG has first been obtained."

In addition, section 3 imposes certain conditions upon the ability of the USG to consent to such third-party trans-

fers. Section 3(a) provides that, with respect to proposed transfers of virtually all defense articles to another country, such consent may not be given unless "the United States itself would transfer the defense article under consideration to that country." This means that the USG may only consent to such transfers where it itself would be able as a matter of law, and willing as a matter of policy, to furnish the article proposed for transfer to the contemplated recipient. In addition, if the proposed transfer involves a "significant defense article" on the U.S. Munitions List, such consent may not be given unless the intended transferor agrees to demilitarize the article prior to transfer, or unless the proposed recipient first provides written assurance to the United States that it will not transfer the article further without the consent of the United States. (As a matter of firm practice, the USG in seeking the latter assurances also requires assurances that the article being transferred will be used only for those purposes for which FMS sales are authorized under section 4 of the AECA, e.g. legitimate self-defense.) Lastly, section 3(d) of the AECA provides that prior to giving consent to a proposed third-party transfer, the President must provide a detailed notification of the intention to so consent to the Congress. Consent may not be given if, within thirty calendar days of such notification, the Congress adopts a concurrent

resolution disapproving the intended consent. The congressional notification procedures of section 3(d) do not obtain, however, in cases of proposed transfers of spare and repair parts and services, or of temporary transfers for repair and maintenance purposes. The latter exemption does not obviate the need for USG consent to transfers for such purposes.

Section 3(c) of the AECA provides for certain statutory consequences in the event of an unauthorized third-party transfer in "substantial violation" of the governing sales agreement, either in terms of the quantity involved or of the gravity of the consequences regardless of the quantity. Section 3(c)(2) requires the President to "report to the Congress promptly upon the receipt of information" that such a substantial violation "may have occurred." (It should also be noted that section 3(e) of the AECA requires that the President shall report "immediately" any information he has received that an unauthorized third-party transfer has been made, whether or not such transfer amounts to a "substantial" violation of the governing agreement.)

Section 3(c)(1)(A) and section 3(c)(3) of the AECA, taken together, provide that under the circumstances described in the preceding paragraph, the offending country shall be ineligible for further FMS financing "if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution."

Under section 3(c)(4), such ineligibility continues until such time as (1) the President determines that the substantial violation has ceased, and (2) the offending country has given assurances satisfactory to the President that such a violation will not recur.

It will be noted from the foregoing that the scope of the statutory ineligibility provided for under section 3(c) in the event of a substantial violation of a sales agreement by an unauthorized third-party transfer (as must be distinguished from an unauthorized use of a defense article) extends only to ineligibility for further FMS financing, either in the form of credit or loan guaranties. Nevertheless, the ineligibility established under section 3(c) must be regarded only as a statutory minimum, required to be imposed when certain legal criteria have been satisfied. The President would remain entirely free to impose further sanctions upon the offending country as a matter of policy in order to underscore the seriousness with which the United States views strict adherence to the terms under which defense articles are sold under FMS. That a country is "eligible" for sales under FMS does not mean that any such purchase requests will in fact be honored, and the failure of a country to observe its obligations with respect to third-party transfers would be a major factor in deciding whether to approve FMS sales to that country.